

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1024 of 1995

in

SPECIAL CIVIL APPLICATION No 11439 of 1994

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN  
and  
MR.JUSTICE M.H.KADRI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
1 to 5 : No.

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TODARMAL JIVA YADAV

Versus

STATE OF GUJARAT

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Appearance:

MR KM PATEL for Appellant  
MR SP HASURKAR for Respondent No. 1  
Mr.S.R. Brahmhatt for respondent No.2

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CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and  
MR.JUSTICE M.H.KADRI

Date of decision: 14/09/98

ORAL JUDGMENT: (Per: K.G. Balakrishnan, C.J.)

This appeal is directed against the order dated September 2, 1995, passed by the learned single Judge, in Special Civil Application No.11439 of 1994.

The appellant retired from service as Chief Engineer from Kandla Port Trust in the year 1994. He initially joined the services as Overseer with the State Government on July 11, 1959. He was promoted as Junior Engineer and while working so he had submitted an application for appointment to the post of Assistant Engineer in Kandla Port Trust. He was selected for appointment on September 15, 1965. He had submitted his resignation to the State Government and joined the service of Kandla Port Trust as Assistant Engineer and by successive promotion he became Chief Engineer and retired from service in the year 1994. The appellant had submitted an application to the State Government stating that his services in the State Government from 11.7.1959 to 30.9.1965 be treated for the purpose of pension and pursuant to various orders passed by the Central Government, the State Government may be directed to pay the amount to Kandla Port Trust as one-time pension. The appellant submits that the period of his duty in the State Services i.e., from 11.7.1959 to 30.9.1965, be directed to be counted for pension. Though several correspondence were made between the Kandla Port Trust and the State authorities, the request made either by the appellant or by the Kandla Port Trust was not acceded to by the State Government and the appellant filed the Special Civil Application. The Special Civil Application was rejected by the learned single Judge on the ground that, even though the appellant was working on pensionable service, he had resigned from the State services to join Kandla Port Trust and, therefore, the State Government was not liable to pay any pension to the appellant and the Government cannot be asked to pay one-time pension. Aggrieved by the same, the present appeal is filed.

We heard learned counsels for the parties.

The learned counsel for the appellant submitted that the appellant had submitted his application for appointment of Assistant Engineer in Kandla Port Trust through proper channel and when he was selected by the Kandla Port Trust for being appointed as Assistant Engineer, the State Government could have simply relieved him to join the service of Kandla Port Trust. The insistence of the State authorities to tender resignation was unnecessary and, in that view of the matter, the

services rendered by him to the State Government should be counted for the purpose of pension. The appellant relied upon various circulars issued by the Central Government. Annexure "D" is a circular issued by the Pension Unit from Ministry of Home Affairs, Department of Personnel & Administrative Reforms, New Delhi, wherein, it is stated that where a Central Government employee born on pensionable establishment is allowed to be absorbed in an autonomous body, the service rendered by him under the Government shall be allowed to be counted towards pension under the autonomous body irrespective of whether the employee was temporary or permanent in Government. It is also made clear that the pensionary benefits will, however, accrue only if the temporary service is followed by confirmation. Another circular was also issued on February 7, 1986, by the Ministry of Personnel, Public Grievance & Pension, Department of Pension & Pensioners' Welfare, New Delhi, (Annexure "I"), wherein, it is stated that the Central Government had issued orders that where a Central Government Employee born on pensionable establishment is allowed to be absorbed in a Central Autonomous Body having a pension scheme of its own, the service rendered by him under the Government shall be allowed to be counted towards pension under the Autonomous Body irrespective of whether the employee was temporary or permanent in Government subject to certain conditions. The question arose whether the persons working in the State Government, who are absorbed in a Central Autonomous Body, can be extended the same benefits, and it is made clear that reciprocal arrangements may be entered into with the various State Governments to the effect that where employees of the State Governments/ State Autonomous Bodies / State Statutory Bodies have been absorbed in the Central Autonomous Bodies, they may be allowed the same benefits as have been extended to the Central Government servants and vice-versa, and it is made clear that the said orders shall apply to employees of the State Governments and State Autonomous Bodies moving to Central Government/Central Government Autonomous bodies in respect of 13 State Governments listed therein and State of Gujarat figures at Sr. No.(x). Therefore, it is clear that a government servant of the State of Gujarat, who later on is absorbed in the Central Government Autonomous body, is entitled to seek the benefits of the circulars and claim that the services rendered by him in the State service should be counted for pension.

From the correspondence issued by the Kandla Port Trust, it is clear that the Kandla Port Trust wanted the State Government to extend the benefit of pension to the

petitioner. In one of the letters, which is produced at Annexure "A", dated July 18, 1990, it is stated that the appellant had worked in the State Government before joining the Kandla Port Trust; that he applied through proper channel for appointment to the Kandla Port Trust; that he resigned from the State Government and joined the Kandla Port Trust; that there was no break in service, and the government orders dated 29.8.1984 are applicable to the employees in the State Government and the autonomous bodies. Under the above circumstances, it was the duty of the respondents to respond to this correspondence and extend the benefit to the appellant.

In the result, this appeal is allowed. The order dated September 2, 1995 passed by the learned single Judge in Special Civil Application No.11439 of 1994, is set aside. The first respondent is directed to calculate the amount equivalent to one-time pension of the appellant and to deposit the same with the second respondent, within a period of one month from the date of receipt of copy of this order. The second respondent may extend the pensionary benefits available to the appellant and pass appropriate orders. There shall be no order as to costs.

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(swamy)